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AN ACT

RELATING TO STATE FINANCE; ALLOWING DIRECT INVESTMENT OF THE SEVERANCE TAX PERMANENT FUND IN NEW MEXICO OWNED AND OPERATED FINE ART AND FINE MUSICAL INSTRUMENT PRIVATE EQUITY FUNDS; PROVIDING AND QUALIFYING LIMITATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 7, Article 27 NMSA 1978 is enacted to read:

"INVESTMENT IN FINE ART AND FINE MUSICAL INSTRUMENT PRIVATE EQUITY FUNDS OWNED AND OPERATED IN NEW MEXICO.--

A. No more than three percent of the market value of the severance tax permanent fund may be invested in New Mexico fine art and fine musical instrument private equity funds.

B. Not more than sixty million dollars (\$60,000,000) of the amount authorized for investment pursuant to Subsection A of this section shall be invested in a fine art private equity fund. Not more than forty million dollars (\$40,000,000) of the amount authorized for investment pursuant to Subsection A of this section shall be invested in a fine musical instrument private equity fund.

C. The state investment officer shall make investments pursuant to this section only upon approval of the state investment council after a review by the private

1 equity investment advisory committee. The state investment  
2 officer may make an investment pursuant to this section only  
3 in a New Mexico fine art or fine musical instrument private  
4 equity fund that:

5 (1) is domiciled in New Mexico;

6 (2) is a reputable investment company with  
7 sufficient expertise in fine art or fine musical instruments;

8 (3) has a majority of its employees  
9 domiciled in New Mexico; and

10 (4) meets the following conditions:

11 (a) representations and warranties made  
12 in the fund's private equity offering memorandum, its  
13 subscription agreement and any other offering document have  
14 been approved by the state investment council;

15 (b) the fund manager has provided to  
16 the state investment council audited statements on a  
17 quarterly basis reflecting the activities of the fund; and

18 (c) all bank accounts of the fund  
19 manager, whether used for operations or asset acquisition,  
20 reside in banking institutions operating in New Mexico.

21 D. As used in this section:

22 (1) "New Mexico fine art private equity  
23 fund" means any limited partnership, limited liability  
24 company or corporation organized and operating in New Mexico  
25 that:

1 (a) has as its primary business  
2 activity the use of funds to acquire fine art, which is  
3 defined as art that has demonstrated that it has: 1) a  
4 secondary market; 2) either been sold at auction or been  
5 produced by an artist whose other work has sold at auction;  
6 and 3) a value not less than fifty thousand dollars (\$50,000)  
7 or more than five million dollars (\$5,000,000);

8 (b) will hold the fine art acquisitions  
9 for sale opportunistically, not later than ten years from the  
10 date of acquisition, with the objective of capital  
11 appreciation; and

12 (c) accepts investments only from  
13 accredited investors as that term is defined in Section 2 of  
14 the federal Securities Act of 1933, as amended, and rules  
15 adopted pursuant to that act; and

16 (2) "New Mexico fine musical instrument  
17 private equity fund" means any limited partnership, limited  
18 liability company or corporation organized and operating in  
19 New Mexico that:

20 (a) has as its primary business  
21 activity the use of funds to acquire fine musical  
22 instruments, which are defined as musical instruments that:  
23 1) are stringed, unfretted instruments; 2) were made in the  
24 seventeenth, eighteenth or nineteenth century in Italy,  
25 France, Germany or England; 3) have a maker whose instruments

1 have sold at auction; 4) have demonstrated that they have a  
2 secondary market; and 5) have a value not less than one  
3 hundred thousand dollars (\$100,000) or more than eight  
4 million dollars (\$8,000,000);

5 (b) will hold these acquisitions for  
6 sale opportunistically, not later than ten years from the  
7 date of acquisition, with the objective of capital  
8 appreciation; and

9 (c) accepts investments only from  
10 accredited investors as that term is defined in Section 2 of  
11 the federal Securities Act of 1933, as amended, and rules  
12 adopted pursuant to that section."

13 Section 2. Section 7-27-5 NMSA 1978 (being Laws 1983,  
14 Chapter 306, Section 7, as amended) is amended to read:

15 "7-27-5. INVESTMENT OF SEVERANCE TAX PERMANENT FUND.--  
16 The severance tax permanent fund shall be invested for two  
17 general purposes, to provide income to the fund and to  
18 stimulate the economy of New Mexico, preferably on a  
19 continuing basis. The investments pursuant to Sections  
20 7-27-5.1 and 7-27-5.6 NMSA 1978 shall be those intended to  
21 provide maximum income to the fund and shall be referred to as  
22 the market rate investments. The investments pursuant to  
23 Sections 7-27-5.3 through 7-27-5.5, 7-27-5.13 through  
24 7-27-5.17, 7-27-5.22 and 7-27-5.24 through 7-27-5.26 NMSA 1978  
25 and the investments permitted for fine art and fine

1 musical instruments provided in this 2005 act shall be those  
2 intended to stimulate the economy of New Mexico and shall be  
3 referred to as the differential rate investments. The prudent  
4 man rule shall be applied to the market rate investments, and  
5 the state investment officer shall keep separate records of  
6 the earnings of the market rate investments. All transactions  
7 entered into on or after July 1, 1991 shall be accounted for  
8 in accordance with generally accepted accounting principles."=

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